

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 7, 2001

GSBCA 15407-RELO

In the Matter of OKYON KIM YBARRA

Okyon Kim Ybarra, APO Area Pacific, Claimant.

Walter H. Kreamer, Jr., Civilian Personnel Officer, Headquarters, 34th Support Group, Seoul Civilian Personnel Advisory Center, Department of the Army, APO Area Pacific, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Department of the Army transferred Okyon Kim Ybarra to Seoul, Korea, in October 1999. Ms. Ybarra was authorized a temporary quarters subsistence allowance (TQSA) for herself, her two young sons, and her dependent mother upon her arrival in Seoul. The Army has paid amounts claimed by Ms. Ybarra as TQSA for lodging and laundry during her first sixty days at the new post. The agency has refused to pay any of the amount claimed for meals, however. The employee challenges the latter determination.

Ms. Ybarra initially sought reimbursement for \$5,847.58 in meal costs. She submitted an itemized accounting which shows amounts for breakfast, lunch, and dinner on each of the sixty days in question. An agency representative expressed concern that some of the meal expenses appeared to be excessive and asked for receipts demonstrating payment. In response, Ms. Ybarra voluntarily reduced the amounts she sought for many of the meals, primarily lunches. The total she now seeks is \$5,300.38.¹

The Army makes the following contentions in support of its position: The meal costs alleged by Ms. Ybarra are excessive in that they are out of line with other costs claimed by employees with similar-sized families at the same location. The claim is also suspicious in that the employee has not itemized which meals were eaten in restaurants and which were prepared by her or her mother. (Ms. Ybarra occasionally purchased food to cook at her brother's house or in a microwave oven in her hotel room.) Additionally, amounts listed for

¹Both the employee and the agency use the figure \$5,298.38, but the amounts claimed for all meals total \$5,300.38.

lunches (\$14 to \$25 per day for all four family members) are considerably greater than the \$1.95 cost of a child's school lunch. Moreover, agency policy is to require receipts for meals costing more than \$25 and to encourage the keeping of receipts for other meals, and Ms. Ybarra kept no receipts.

Two other agency policies regarding TQSA claims were also brought to our attention by the Army. First, "officials approving allowance claims for payment will verify that amounts claimed are corroborated by creditable proof of payment and will not approve payments that are not supported by customary records." Second, "any claims submitted for reimbursement which exceed reasonable costs for average, adequate accommodations or meals are subject to investigation, and, if warranted, will be turned over to the Criminal Investigation Command for investigation."

An investigation into the possibility that Ms. Ybarra may have submitted a fraudulent TQSA claim was conducted by the Army. The agency acknowledges that "the investigation yielded no credible information to substantiate a criminal offense."

Ms. Ybarra admits that she was aware of a requirement to keep receipts for meals costing more than \$25, and that she kept no receipts for any meals. (She did, however, maintain and provide receipts for lodging and laundry.) In a statement to an agency investigator, sworn under oath, she said that her first TQSA claim was based on her best recollection of the cost of every meal; "the amounts were as accurate as I could remember." She changed the amounts for the lunches after being informed by an agency representative that snacks eaten by her children upon their return home from school could not be reimbursed; the revised figures do not include the cost of the snacks. Ms. Ybarra told the investigator that she paid for meals with cash withdrawn from savings and checking accounts and by credit card.

Discussion

Congress has authorized agencies to pay a TQSA to employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge. The TQSA is to cover the reasonable cost of lodging, meals, and laundry expenses incurred by an employee and his or her family. 5 U.S.C. § 5923(a)(1) (1994); Gary MacLeay, GSBCA 15394-RELO (Nov. 22, 2000).

The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including TQSA. Exec. Order No. 10,903, § 2, 3 CFR 433, 434 (1959-1963), reprinted as amended in 5 U.S.C. § 5921 (1994). The Department of State Standardized Regulations (DSSR) contain these regulations. The DSSR explain: "The temporary quarters subsistence allowance is intended to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations in a hotel, pension, or other transient-type quarters at the post of assignment, plus reasonable meal and laundry expenses." DSSR § 122.1. The DSSR provide that TQSA may be reimbursed in the lesser of either (a) the actual amounts of allowable expenses incurred by the employee and family members or (b) specified maximum amounts, which are percentages of the per diem amounts prescribed by the Secretary of State for the foreign post involved. Id. § 123.3. To be reimbursed, an expense must actually have been

incurred, reasonable in amount, and incident to the occupancy of temporary quarters. Id. § 125.

The DSSR is very specific as to documentation necessary to prove that an expense was actually incurred. For lodging and laundry, "[s]upporting receipts or other appropriate documentation for the daily cost . . . shall . . . be supplied." DSSR § 125. For meals, however, "[e]vidence of the daily cost . . . shall be a certified statement by the employee." Agencies are given narrow latitude regarding proof of meal costs: they may only "determine how detailed they want this [certified] statement: either a per day meal statement or a per meal/per day statement." Id. The provisions of the DSSR regarding documentation were amended effective April 26, 1998.

The Department of Defense (DoD) Civilian Personnel Manual, DoD 1400.25-M, contains rules for overseas allowances and differentials, including TQSA. These rules are issued subject to various controlling authorities, including the DSSR. DoD 1400.25-M, subch. 1250, § A.1. The DoD Manual properly provides that applications for TQSA reimbursement must be "accompanied by receipts, as required by the DSSR . . . , that support the amounts claimed." Id. § D.6. The Manual goes on to say, however:

Officials approving allowances claims may also require receipts for meals claimed under TQSA which they consider extravagant. If an employee fails to submit receipts, allowance payments will be suspended until supporting documentation is submitted. Officials approving allowance claims for payment will verify that amounts claimed are supported by receipts and will not approve payments that are not supported by documentation.

Id.

The last provision is clearly in conflict with the DSSR's rules that receipts are necessary for reimbursement of only lodging and laundry expenses, and that a certified statement from the employee will suffice for reimbursement of meal costs. The DoD Manual was revised most recently in December 1996. When the Secretary of State revised the documentation requirements in April 1998, the DoD provision in question became obsolete. DoD may no longer enforce it.²

Ms. Ybarra has clearly fulfilled the requirement for a certified statement by itemizing her meal expenses and giving an Army investigator a sworn statement that the amounts she claims are as accurate as she can remember. Given the regulation, which effectively presumes that employees tell the truth about money they spent for meals, an agency must bear a heavy burden in attempting to prove that an employee's statement is false. The Army has not met this burden here. It has not made any effort to investigate Ms. Ybarra's spending habits, though it has learned the sources of her funds. More telling, the agency has conceded

²This is not to say that we consider DoD's policy unwise or the DSSR's policy preferable. It is simply to say that the Manual provision is no longer good law because it is inconsistent with a regulation to which it must, by its own terms, pay deference.

that it has no evidence of fraud. We conclude, based on the record before us, that Ms. Ybarra really did spend the amounts she claims for meals.

The question remains whether the amounts the employee spent were reasonable. Although the agency maintains that these amounts were out of line with sums spent by families of similar size while temporarily housed in Seoul, it has provided no evidence in support of its contention. Further, even if Ms. Ybarra and her family spent more than others did to eat, this does not mean that their decisions were necessarily unreasonable. Differences in circumstances such as accessibility to cooking facilities, dietary needs, and ages of family members may have decided impacts on the reasonableness of expenditures for meals.

We are also concerned that the Army's determination to investigate claims which "exceed **reasonable** costs for average, **adequate** . . . meals" is misplaced. The maximum amounts permitted to be reimbursed under the DSSR are designed "to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations in . . . transient-type quarters . . . , plus reasonable meal and laundry expenses." DSSR § 122.1. We have held that maximum reimbursement levels for meals as part of temporary quarters subsistence expenses (TQSE), a similar benefit for employees relocating within the United States, are, in the absence of other information, a fair guide to the reasonableness of the cost of restaurant meals. Suzanne G. Wade, GSBCA 13720-RELO, 97-1 BCA ¶ 28,706 (1996); Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996). Because of the similarity of the benefits, we apply the same rule to TQSA.

Ms. Ybarra actually spent between \$60 and \$104 on meals for her family during each of her first sixty days in temporary quarters in Seoul. The maximum allowable for reimbursement, in light of the size of her family and the ages of its members, was \$123 during each of the first thirty days and \$108 during each of days thirty-one through sixty. DSSR §§ 123.31, 123.32 (applying rates in *id.* § 925). Thus, she spent between forty-nine and eighty-three percent of the maximum during the first thirty days and between seventy-one and ninety-six percent of the maximum during the second thirty. These figures are on their face reasonable and should not be construed as unreasonable without some compelling reason for doing so.³

It is true, as the Army points out, that we have on occasion denied reimbursement of the entire amount claimed for meals consumed while an employee and his family were authorized to receive TQSE. The cases cited by the agency are highly unusual, however. In Luther R. Dixon, GSBCA 13694-RELO, 97-1 BCA ¶ 28,947, the employee alleged that he and his family had spent precisely \$350 per day for meals and that he had kept receipts documenting the costs, but the briefcase containing these receipts had been stolen. Mr. Dixon did not report the theft to the police. In Michael L. Morgan, GSBCA 13646-RELO, 97-2 BCA ¶ 29,018, the employee presented two inconsistent sets of expense claims, one of

³We note additionally that no regulation forbids an employee from including in a TQSA claim for meal expenses the costs of snacks purchased for and eaten by an employee's child. Because Ms. Ybarra has reduced her claim to exclude the snack costs, however, we have not analyzed whether the amounts she originally sought would exceed permissible limits or be reasonable.

which was so excessive that we termed it "outlandish," and did not respond constructively to our request for justification of the amounts sought. In Michael D. Fox, GSBCA 13712-RELO, 97-2 BCA ¶ 29,217, the employee claimed identical costs on each day in temporary quarters (including \$10 for coin-operated laundry!) and refused to submit an itemized statement. All three of these cases have in common claims which were patently incredible and claimants who were wholly unable to demonstrate that they had actually incurred the expenses they sought. The same cannot be said for Ms. Ybarra.

Decision

We settle this claim by directing the Army to pay to Ms. Ybarra the entire amount claimed as reimbursement for meal expenses while on TQSA, \$5,300.38.

STEPHEN M. DANIELS
Board Judge